The New York Experience with Rent Regulation and Home Rule

by Timothy L. Collins

Let me first thank the Council for this opportunity to speak about New York's experience with rent regulation. I should note that I have no real agenda here except to share what I have learned. This is my first visit to Seattle. I have no political or financial ties here. I should add that I will not tell you that Seattle should or should not have rent regulations.

Smart choices about whether to regulate rents and evictions are highly situational. One size does not fit all. Nonetheless, whenever the issue of regulating rents arises, myths and facts often get churned up in high decibel exchanges that produce more heat than light. Invariably, there is a lot of rationalizing of self interest that occurs. Tenants want lower rents; owners want to charge the highest rents they can. Both sides seem to stack up arguments that serve their ends.

Some will assert that housing is a human necessity which should be treated as a right instead of a market commodity – not acknowledging that this does not concretely address how to actually produce quality housing for the most people.

Some will confidently assert that any departure from free markets is inevitably bad. This rests on a kind of analytical myopia – a vestige of introductory economics perhaps. The orthodox approach is to assume "*ceteris paribus*" – that when analyzing market variables all other things are equal. All other things are never equal.

What is truly stunning is the confidence with which people condemn rent regulation as bad policy, while turning a blind eye towards all of the other forms of government intervention that suppress housing supply and thereby greatly enhance the value of existing buildings - often at the undue expense of renters. They are quick to describe rent regulations as a forced subsidy from owners to tenants but fail to recognize the many ways in which owners themselves are subsidized by other forms of intervention.

The purpose of this presentation is to clarify, as best I can, the real impacts of rent regulation based on the New York experience.

For the past thirty years, I've been a direct participant in the ongoing public conversation about rent regulation in New York as well as the issue of local control.

For seven years I served as executive director to the New York City Rent Guidelines Board and later as a consultant to the Board. The Board conducts detailed annual studies into the economic condition of rental housing in the city and sets rents for one million rent stabilized apartments. I also served with the city's Office of Rent and Housing Maintenance which oversees housing code enforcement and with the New York State Attorney General's Office, Real Estate Finance Bureau, which enforces laws governing cooperative and condominium conversions. For the past twenty years I have been in private law practice as a partner in the law firm of Collins, Dobkin and Miller LLP. I presently co-host a local television program called "Tenant Action Today" and I sometimes appear before legislative committees and regulatory agencies. I also teach constitutional history at Pace University in New York.

I hope this experience will help inform Seattle's debate on whether to consider similar

policies.

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NYC's Rent Laws

New York has retained some form of rent regulation since 1943. In the early years this was a strict form of regulation, permitting few rent increases and few exceptions from coverage. This older "rent control" system now covers only about 1% of the total rental stock.

Since 1969 the city has had a more moderate, "second generation" set of regulations. The newer rent stabilization laws (which now govern 47% of the total rental stock)[1] permit periodic rent increases to compensate for owners' operating cost changes, capital improvements and to preserve net operating income from the effects of inflation. New construction is exempt from coverage. Both the old rent control system and the rent stabilization system permit relatively large increases and, in many cases, full deregulation on vacancy. Both systems guarantee special rent increases in "hardship" cases.

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For decades New York's rent laws have generated controversy. There have been heated debates about property rights vs. housing as a human right. There have been distorted representations of academic "consensus" on the subject. Tenants have been confronted by various efforts by the city's real estate industry to portray rent regulation as costly, ineffective and counterproductive. With extensive data collected for over half a century, informed officials and activists have gradually been able to replace rhetoric with facts.

Though controversy remains, several points have effectively been settled by the evidence. Moderate "second generation" rent regulations have not had an adverse effect on new construction; they have not caused abandonment and they have not caused a measurable underutilization of larger units. Some arguments remain about whether rent protections have affected the quality of units (in terms of maintenance), whether their benefits are efficiently allocated; whether they have negatively impacted local tax revenues and whether they artificially inflate rents in unregulated units. As I will demonstrate, there is no good evidence to support any of these claims.

In terms of maintenance, New York's housing stock is in better shape than its been since the mid 1960's and there are substantial incentives within the system to support maintenance and improvements.

In terms of allocating benefits, the purpose of rent regulation is to prevent the exaction of unfair or excessive rents, not to create a precisely targeted welfare system for low income tenants. While it can greatly benefit low income tenants, it has never been about subsidizing anyone but about market fairness for all.

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[1] http://www1.nyc.gov/assets/hpd/downloads/pdf/2014-HVS-initial-Findings.pdf (See Table 3)

In terms of its effects on local tax revenues, no one has persuasively demonstrated that a dollar of rent collected by a New York landlord produces more local tax revenues than the same dollar left in the pocket of a tenant who may spend it locally generating other types of local tax revenues.

In terms of the effects of rent regulation on rents in unregulated units, existing evidence is speculative and contradictory.

Perhaps most importantly, many critiques of rent regulation treat economic evictions as abstractions: the efficient sweep of market forces. This, of course, is a terribly sterile way to consider the human toll of lost homes and fragmented neighborhoods.

With a dwindling stock of logic and evidence in its favor, the city's real estate industry has largely retreated from large scale public relations efforts to convince the public of the negative consequences of rent and eviction protections. As a result, the politics of rent regulation in New York are now driven by the raw financial power of the real estate industry over elected officials vs. the grassroots political power of the city's tenant population. (I sincerely hope Seattle will avoid this trap by building its rent and eviction policies on reason rather than arbitrary financial power or purely political concerns.)

Ultimately, the New York state legislature still determines the outcome of these disputes. The city's rent laws remain in effect pursuant to state enabling legislation which dramatically limits the city's ability to extend protections further.

The state's control over what amounts to a local concern has been a disaster in terms of ethics and accountability. Every time state enabling laws are up for renewal, millions of dollars have been funneled from the city's real estate moguls to state legislators (many of whom lack a single rent regulated constituent in their districts) creating a disconnect between power and accountability which has distorted and crippled the city's ability to effectively manage its complex housing market.

But the corruption doesn't end there. The two most powerful members of New York's legislature now face trials for accepting bribes from a city based real estate developer. Ongoing investigations suggest there is much more to come.

See:http://www.nytimes.com/2015/05/05/nyregion/dean-skelos-new-york-senate-leader-and-son-are-arrested-on-corruption-charges.html?_r=0

With so much power divorced from accountability, New Yorkers have been left to rely on criminal prosecutions to preserve good government.

All this suggests that if there is to be rent regulation, local control is both more intelligent and more ethical than control by a more remote and largely disconnected legislature.

I will discuss all of these issues in greater detail below.

The Views of Economists

The views of professional economists on this subject are often distorted. Because this type of misrepresentation may have significantly influenced the debate in Seattle, I touch on it first.

The common misconception that economists universally oppose rent controls appears to find its source in a survey where economists were asked, among other things, if they agreed with the proposition that "a ceiling on rents reduces the quantity and quality of housing available." Of the American economists responding, 77 percent "generally agreed" and 19 percent "agreed with provisions." One has to wonder how anyone could reasonably disagree with such a statement: a rent "ceiling" would be a drastic measure that would certainly have dramatic market consequences.

New York's moderate rent regulations do not impose a ceiling on rents. The consensus on the effects of a rent ceiling hardly proves that economists are united in opposition to moderate rent regulations. These allow adjustments in rents to compensate for increases in operating costs and exempt new construction from coverage. Economists who have directly examined the impact of New York's moderate rent laws have thoroughly questioned and criticized the conclusions of those who have considered only abstract models or only the effects of strict rent control laws.

As Michael Mandel, former chief economist for Business Week, has explained:

> [E]conomics textbooks, like introductory books in other fields, often engage in oversimplification to make a pedagogical point. In this case, the textbook authors needed a way of illustrating the effects of imposing a price ceiling on a market, and rent control provided a vivid example to liven up the usual dry supply and demand diagram. But good examples make bad economics. A price ceiling, as defined by economists, is a uniform ban on selling a product above a certain price…. It is clear that such a policy inevitably leads to shortages. However, rent control laws in the United States are not price ceilings in this sense. Under all existing laws, rent control regulates the rent on most apartments built before a particular date, but new construction is exempted from any rent regulation. In New York City, for example, the rent laws do not cover apartment buildings constructed after 1974 [except for voluntary coverage in exchange for tax abatements]. This apparently small difference makes a tremendous difference in the effects of rent control. We teach in first year economics courses that the supply of a good is determined by the price at which it can be sold. In the case of housing supply, the construction of new apartments is determined by their rent, which under existing rent laws is unregulated. This suggests that these laws will not suppress the supply of new apartments (and ... may even increase supply).[2]

On the issue of housing quality, economists who claim rent regulations cause a decline in housing quality often fail to examine the fact that most regulatory systems allow generous rent adjustments for building wide capital improvements and for improvements to individual apartments. Moreover, tenants very often will undertake their own repairs and improvements. Below is an abstract of an article by economist

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[2] Michael Mandel, Does Rent Control Hurt Tenants?: A Reply to Epstein, Brooklyn L. Rev., vol. 54, 1267, 1268 (1989).

Edgar Olsen, addressing this oversight:

> Economists' views concerning the effect of rent control on the maintenance of controlled apartments are based on extremely simple models of housing markets and rent control ordinances and on causal empiricism. This paper shows that the models are seriously deficient in that they ignore essential features of actual rent control ordinances and important responses to them. When these features and responses are taken into account, the effect of rent control on housing maintenance of the controlled stock is theoretically ambiguous. The paper also shows that the few systemic empirical studies have serious flaws. Therefore, there is no basis for some economists' strongly held belief that rent control leads to worse maintenance.[3]

Home Rule – Who Best Determines Whether Rents Should Be Regulated?

From a purely legal perspective municipal governments are subdivisions of states and, consequently, state governments have a right to control such housing policies. But having a right to control an area of law reveals nothing about where the best informed, most democratic and wisest policy judgments are likely to come from.

New York has had a "home rule" issue for decades. In 1971 the state legislature adopted what is known as the "Urstadt law". This law prevents the city from adopting rent regulations that are more stringent than those already in effect.

The general consequence of this disconnect between the power to control rent policies and the lack of direct accountability to tenant voters has been three fold.

First, upstate representatives are much more likely to fall victim of the market orthodoxy peddled by well financed real estate interests than local representatives who are directly familiar with actual relations between landlords and tenants in their districts. When New York's rent laws are up for renewal it is quite common to hear completely ill informed statements about rent regulations from upstate politicians who lack a single rent regulated apartment in their districts.

Second, because campaign donations from the city's real estate interests are most attractive those who do not have to face regulated tenants at election time, a form of soft corruption develops where money purchases influence without any real accountability. Millions in campaign contributions from the city's real estate interests have been documented over the years. As previously noted, the exercise of power without accountability is highly undemocratic and particularly fertile ground for

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[3] Edgar Olsen, What do Economists Know About the Effect of Rent Control on Housing Maintenance?, Journal of Real Estate and Finance Economics, vol. 1, No. 3 Article 5.

corruption of all sorts.

Also previously noted, where the industry cannot purchase influence through "lawful" campaign donations, real corruption may ensue. The former majority leader of the New York State Senate as well as the Speaker of the State Assembly are both facing trials in the coming months for accepting bribes from a local real estate developer.

One final note: expertise matters. If Seattle were a small town lacking in resources to effectively study rent regulation policies, state control may make sense. But that is not the case here.

The Constitutionality of Rent Regulation

While it may appear to be a digression and the constitutionality of rent regulation is well settled, the history of that debate sheds light on some fundamental issues that are still poorly understood by the public and worth exploring here.

Interestingly, it was the efforts of a hotel chambermaid from Wenatchee, Washington that ultimately laid the legal foundation for later decisions which put to rest any claim that rent regulations are unconstitutional.

During what was known as the "Lochner Era" (named after the infamous 1905 case of Lochner v. New York which involved a state law limiting the work hours of bakers) federal courts struck down nearly 200 progressive state and federal laws as violative of free market principles – mainly laws establishing minimum wages and setting limits on work hours.

In 1935 Elsie Parrish, a chambermaid at the Cascadian Hotel in Wenatchee, demanded $216.19 in back pay under Washington's minimum wage law. The Hotel challenged the constitutionality of the law. Parrish's fight for back wages eventually made it to the nation's highest court. Few legal scholars at the time believed she had a chance. The court had stricken a similar minimum wage law just the year before. But in West Coast Hotel v. Parrish, the U.S. Supreme Court held that courts had no business second guessing choices made by legislatures about how to best protect workers.

This 1937 decision is one of the most important Supreme Court opinions in American history, comparable to Brown v. Board of Education in its broad impact. It marked a critical turning point for Franklin Roosevelt's New Deal, ending a series of judicial setbacks for progressive programs.

In the 1990's, a group of conservative legal scholars attempted to resurrect the Lochner Era's conservative judicial philosophy and restore the court's willingness to obstruct the progressive economic choices of legislatures – this time under an expanded doctrine of "regulatory takings". In 2005 that movement was stopped in its tracks by a unanimous court in the case of Lingle v. Chevron. In that case the court held that it would not second guess the decision of the Hawaii state legislature to regulate the rents of service stations leased to dealers by oil companies.

The court was highly critical of lower court's decision to engage in what amounted to its own legislative determination. The court wrote:

> Although the instant case is only the tip of the proverbial iceberg, it foreshadows the hazards of placing courts in this role. To resolve Chevron's takings claim, the District Court was required to choose between the views of two opposing economists as to whether Hawaii's rent control statute would help to prevent concentration and supracompetitive prices in the State's retail gasoline market. Finding one expert to be "more persuasive" than the other, the court concluded that the Hawaii Legislature's chosen regulatory strategy would not actually achieve its objectives. ... Along the way, the court determined that the State was not entitled to enact a ... rent cap without actual evidence that oil companies had charged, or would charge, excessive rents ... Based on these findings the District Court enjoined further enforcement of [the] rent cap...
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> We find the proceedings below remarkable, to say the least, given that we have long eschewed such heightened scrutiny when addressing substantive due process challenges to government regulation. See e.g. ... Ferguson v. Skrupa... The reasons for deference to legislative judgments about the need for, and likely effectiveness of, regulatory actions are by now well established, and we think they are no less applicable here.

The Ferguson case cited by the court relied directly on West Coast Hotel v. Parrish for this principle of law.

In short, Elsie Parrish's victory on minimum wages for working people in 1937 laid a foundation which survived into the 21st century. Its logic supported the right of states to regulate rents where they saw fit and eliminated a determined effort by conservatives to resurrect the Lochner Era.

But it would be a mistake to conclude that West Coast Hotel v. Parrish stands only for the proposition that courts should never second guess the decisions of legislative bodies. In fact, courts do just that whenever a law is declared unconstitutional. Moreover, there is a line of cases – beginning with Griswald v. Connecticut (written by another Washington native, William O. Douglas) and ending with Lawrence v. Texas – which holds that states have no authority to interfere with private/reproductive choices of citizens. These cases, like Lochner, employed an expansive reading of the due process clause. But they don't rest on a fundamental fallacy Lochner suffered from - the idea that government inaction in economic affairs is an inherently neutral position.

The central point of West Coast Hotel is actually more profound than the simple notion that courts should defer to legislative judgments.

In writing the majority opinion in West Coast Hotel, Justice Charles Evans Hughes observed:

> There is an additional and compelling consideration which recent economic experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power, and are thus relatively defenseless against the denial of a living wage, is not only detrimental to their health and well being, but casts a direct burden for their support upon the community. What these workers lose in wages, the taxpayers are called upon to

> pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. It is unnecessary to cite official statistics to establish what is of common knowledge through the length and breadth of the land. While, in the instant case, no factual brief has been presented, there is no reason to doubt that the State of Washington has encountered the same social problem that is present elsewhere. The community is not bound to provide what is, in effect, a subsidy for unconscionable employers

This last point is highly relevant to Seattle's rent regulation debate (as well as any discussion of minimum wage laws).

Justice Hughes tore back the curtain and exposed "free" labor markets for what they had become – charlatans masquerading as a neutral players. The court recognized that, for Elsie Parrish and millions like her, the lack of a subsistence wage generated a "subsidy" for "unconscionable employers". This turned the argument of employers (that they were being forced to subsidize workers) on its head.

As constitutional scholar Cass Sunstein explained, under Lochner, "[m]arket ordering under the common law was understood to be a part of nature rather than a legal construct, and that it formed the baseline from which to measure the constitutionally critical lines that distinguish action from inaction and neutrality from impermissible partisanship." The court in West Coast Hotel rejected that idea. The common law system is not a part of nature. An almost incalculable number of rules and policies regarding capital formation, investor immunities (think corporations); contract enforcement; estates and trusts; the vesting of real property interests etc.. are not simply enforcing natural and inevitable rights. Rather they shape (and in some cases actually create) property rights. According to Sunstein, the idea that the absence of government regulation leaves a neutral, even playing field, rests upon a classic fallacy – the "fallacy of status quo neutrality".

Do modern housing markets invariably produce neutral and fair results? To answer this question we would need to consider what Seattle might look like if commonly accepted government inputs were discontinued and free markets truly reigned supreme.

To reestablish a fully free market the first thing Seattle would have to do is get rid of zoning. More than any other government policy, zoning laws suppress housing supply and artificially inflate prices and rents – bestowing windfalls on owners of existing structures. As economists Edward L. Glaeser and Joseph Gyourko found in a 2002 study, *The Impact of Zoning on Housing Affordability*, "[m]easures of zoning strictness are highly correlated with high prices" suggesting "that this form of government regulation is responsible for high housing costs where they exist."[4]

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[4]The idea that zoning restrictions subsidize property values may seem counterintuitive. If a variance to a zoning law is granted to a single property owner, that, of course, might greatly increase the value of that individual property. However, if zoning restrictions are repealed altogether

Seattle would also have to strip down the city's building and fire codes. These regulations add to the cost of new construction and, in their absence, tenants would be “free” to choose between safe and structurally sound buildings and low rent firetraps.

Finally, Seattle would need to get rid of all taxpayer subsidized amenities like its mass transit system, parks, public libraries, hospitals, colleges, museums, zoos and its infrastructure for delivering fresh water and removing waste, all of which greatly enhance the attractiveness of the city and artificially inflate the value of existing properties.

And this does not even begin to address all of the less obvious ways government regulates markets and subsidizes various interests – like affording corporate shareholders personal immunity from creditors (something Donald Trump has repeatedly taken advantage of), providing an elaborate judicial system to collect debts, rents and to enforce property rights through evictions and foreclosures; and supplying a pool of labor educated at taxpayer expense to employers.

The purpose of this exercise is, of course, not to actually suggest such policy changes, but to demonstrate that even so called “free” markets are massively distorted by public inputs.

How then should communities forge sound rental housing policies that will reflect the interests of all citizens?

In New York, the answer has clearly been through the renewal of moderate rent and eviction protections so long as vacancy rates remain below 5%.

But hasn’t this unfairly burdened property owners?

The case of James Harmon is instructive. Harmon inherited a five-story brownstone on Manhattan’s Upper West Side. His grandparents paid $41,000 when they bought it in 1949 and by 2005 it was worth three million dollars – a 73 fold increase in value.

Even though it had been subjected to the City's rent regulation system, the brownstone proved to be a great investment. Its skyrocketing value far outpaced growth in the stock market, rising more than twice the nationwide increase in median home prices and nine times faster than the rate of inflation.

On top of this, the state deregulated three of Harmon’s six apartments nearly doubling the building’s rent roll. He was also able to reserve a spacious apartment for his own use.

With vacancy rates at just 3 percent (compared with 10 percent elsewhere in the country) Harmon had heavy bargaining advantages over his unregulated tenants. And New York’s rent laws guarantee a steady return on the three stabilized units through regular rent hikes and special increases for capital improvements.

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and any property owner is permitted to build any structure they desire, that would most likely result in crowded, unattractive communities and, in the long run, a significant drop in the value of existing homes.

So long as the City maintained tight controls on new development, the resulting housing scarcity would continue to render Harmon's old brownstone a jewel of an investment.

So with all this good fortune, what did Harmon do? He sued the City and State claiming that the government had taken his property because it was forcing him to "subsidize" the three remaining rent regulated tenants by holding their rents down. Harmon's challenge came after the previously noted Supreme Court decision in *Lingle*, and he lost at all levels in the federal courts. (Again, thank you Elsie Parrish!)

Harmon, like so many other landlords, claimed that he was only asking to be subject to the free market. But was the $2,500 plus per month paid by Harmons' market rate tenants really a neutral baseline for determining what fair rents should be for their other three tenants? Not quite.

Harmon benefitted from all of the public policies noted above (particularly zoning) which created scarcity and hence enhanced the value of his property.

What Harmon failed to realize was that a truly free housing market in NYC – free of zoning restrictions, historic preservation laws, building codes, public amenities etc – might well resemble a modern version of the largely unregulated city Jacob Riis described over a century ago: an unhealthful, congested and dangerous mess. With the rise in cheap alternatives and a decline in the city's quality of life, Harmon's "market rate" tenants might actually insist on paying rents that are lower than those now paid by his regulated tenants.

So who was being "subsidized"?

A Pragmatic Approach

All of this leads back to the discussion of how best to produce fair and reasonable rents. If housing markets are inevitably legal constructs how do we make those constructs more intelligent and efficient? How can they best serve all citizens?

These questions suggest that we abandon ideology, rhetoric and abstract models and focus on pragmatic issues.

First, rent regulation makes no sense in a robust market where housing options are plentiful. Rent regulations are primarily designed to eliminate profiteering in tight markets. They only make sense where owners are taking undue advantage of situational or long term scarcity. New York's rent laws require prompt deregulation if the citywide vacancy rate exceeds five percent. (In typically healthy rental markets vacancy rates are around eight to ten percent.)

Related to this is the fact that while preserving tenant affordability is an important derivative objective – it is not the primary objective of rent regulation. This is often confusing to policymakers (as well as owners and tenants). The main goal of rent regulation is to eliminate excessive rents driven up by a persistent housing shortage, not to make every apartment affordable. Affordability problems exist everywhere in the country, including in markets where vacancy rates are high and fair bargaining exists. Relieving those affordability problems should not be the burden of landlords who

operate in competitive markets. But it should be the problem of landlords who reap excessive rents in markets with substantial restraints on supply.

Certainly incentives are needed to encourage new housing construction. All rent laws in the United States presently exempt new construction from coverage.

Incentives are also needed to encourage building maintenance and upgrades. New York's moderate rent regulations permit annual increases to cover operating cost changes as well as generous special increases for individual apartment improvements and major capital investments. As a result, the city's housing stock is in the best shape it has been in since detailed surveys began in the 1960's.

The right of owners to evict tenants who fail to meet their obligations and for other valid reasons must also be preserved. New York's rent regulations allow evictions and terminations of leases for non-payment of rent, nuisances, breaches of the lease, non-primary residence, demolition and owner use.

Remaining Controversies

I have addressed various criticisms and misunderstandings about New York's rent laws in a detailed briefing paper, Rent Regulation in New York: Myths and Facts. I will include a few excerpts of that report here and add some additional observations. In doing so, I will also respond to what is perhaps the last comprehensive critique of New York's rent regulations. Sponsored by the Citizens Budget Commission (a watchdog group with extensive funding and influence from banking and financial interests) and written in 2010 by economist Elizabeth Roistacher, Rent Regulation: Beyond the Rhetoric is a comprehensive examination of New York's experience with rent regulations (referred to below as the "CBC Report"). It embodies the remaining criticisms of New York's rent laws which are worth addressing.

First, it is important to highlight areas where a consensus appears to have emerged:

New Construction

On this issue the CBC Report observed, "[o]ne allegation about rent regulation is that the constraint on profitability discourages new housing production. However, there is little evidence to support this contention..."

In a separate real estate industry supported study, examining, in part, the effects of moderate rent regulations on new housing construction, economist Anthony Downs found that "repeated studies of temperate rent controls in the United States provide no persuasive evidence that such controls significantly reduce new construction here." Anthony Downs, Residential Rent Controls: An Evaluation, 4. (Washington, D.C.: Urban Land Institute, 1988.)

New York City's two greatest housing construction booms in the twentieth century occurred during periods when strict rent controls were in effect (but new construction was exempt). During the 1920s, while the Rent Laws of 1920 limited rent increases for existing apartments, the city experienced its first great housing boom, with more than 665,000 units constructed between 1921 and 1928. More than 676,000 new units were

added during New York City's second construction boom from 1947 through 1965, when rent controls for existing units were much more stringent than today.

Finally, when various New Jersey municipalities adopted rent controls in the early 1970's, construction levels fell by significantly greater amounts in towns without rent regulation than in those with it.

Abandonment

The CBC Report addressed the abandonment issue as follows:

> Finally, it should be noted that rent regulation is not a cause of housing abandonment. The high rates of abandonment in the 1970s took place not only in New York, but in many other older cities. The low incomes of tenants were more a factor in constraining rents than was rent regulation. The in-migration of many low income households and the exodus of many middle income households from central cities in the 1960s and 1970s was the fundamental cause of high rates of abandonment.

In 1981, Peter Marcuse of Columbia University undertook a thorough investigation of the relationship between rent control and housing abandonment. Marcuse concluded that "[t]he substantial evidence available from national as well as local studies suggests that there is no correlation between rent control and abandonment. Rent control is neither a necessary nor a sufficient explanation of abandonment. Abandonment takes place, and as severely, in cities without rent control as in cities with it."

Notwithstanding these emerging points of agreement controversies do remain:

Poorly Targeted "Subsidies", Housing Quality, Underutilization, Property Tax Revenues and Effects on Unregulated Rents.

These are the issues where the Citizens Budget Commission continued to critique rent regulation. I have placed them together because they are addressed in a comprehensive response to an Op-Ed in the New York Daily News promoting the findings of the CBC Report. My response is reprinted below.

In her July 7, contribution to "Be our Guest" Carol Kellerman of the Citizens Budget Commission described the "push to continue rent regulation" currently underway in the state legislature as an effort "fueled by far more populist rhetoric than economic reason." Indeed it is Ms. Kellerman and the Citizens Budget Commission who have bought into political rhetoric engineered over two decades ago by the real estate industry and their lobbyists. The Commission's recent report complains that the "benefits" and "discounts" of rent regulation are "poorly targeted" as if rent regulation were some kind of welfare subsidy.

The history of rent regulation and the language of the current laws make clear that it is not properly seen as a subsidy program at all. Rent regulation is a system of protections designed to preserve economic fairness, and to prevent disruption and dislocation, in a

market where chronic shortages allow landlords to exert excessive bargaining power.

New York's first experiment with rent regulation occurred in the 1920's. Why did the state see fit to regulate rents and evictions as we entered the "Roaring Twenties"? The answer is simple. Vacancy rates fell below 1 percent from 1920 to 1924. With such strong demand for apartments, landlords exerted abnormal and excessive bargaining leverage. They began gouging those tenants who could pay and evicting those who couldn't.

Why didn't we have rent regulation during the Great Depression? Housing affordability was at an all time low, rent strikes were rampant and the courts were overburdened with evictions and foreclosures. The answer is simple: vacancy rates were relatively high during this period – partly due to the fact that tenants were increasingly doubled up in overcrowded tenements. Rent regulation simply didn't make sense in a market where apartments were plentiful and rents were competitive. The affordability problem was not driven by a housing shortage. It was caused by mass unemployment. And owners were suffering along with their tenants.

During World War II housing markets tightened once again and the Roosevelt administration implemented federal rent controls as part of a larger effort to curb wartime profiteering, to eliminate unfair market advantages bestowed upon landlords with the decline of new housing starts during the war – not to subsidize the poor.

Similarly, in the late 1960s when the production of new apartments stalled due to a zoning change and rents shot up in newer post-war buildings, rent stabilization was adopted to counter the new-found market power of landlords who owned those buildings. This expansion of regulation protected the newest and previously uncontrolled class of housing in the city – occupied by its more affluent tenants.

The Citizen Budget Commission now recommends accelerated deregulation through universal income tests and the removal of high rent/high income units from coverage – removal that the commission acknowledges has already resulted in the loss of over 117,000 regulated units since 1994.

This would take rent regulation in the wrong direction. It would exacerbate, not reduce, the general problem of rent profiteering in the face of an ongoing housing shortage. New York's rental housing market remains very tight with vacancy rates below 3% while the national average is over 10%.

Until about 20 years ago it was widely understood that the purpose of New York's rent regulation system was to eliminate the ability of landlords to exploit this ongoing housing shortage by charging excessive rents – regardless of tenant income.

Since then, a growing number of elected officials, editorial writers and policy analysts quietly discarded this "fair rent" objective of the system and bought into the notion that tenants in rent regulated apartments are the beneficiaries of subsidies paid for by their landlords.

The Citizens Budget Commission first participated in this shift in a 1991 report describing rent regulation as a subsidy system. This study, along with an earlier one commissioned by the RSA, the city's largest landlord group , influenced Albany lawmakers who, in 1993, adopted a means test for a narrow slice of rent regulated tenants who earn over $250,000 per year (now $200,000) and reside in apartments renting for more than $2,000 per month (now $2,700).

Following the enactment of the 1993 law, John Gilbert, then head of the industry group, the RSA, was quoted as saying "[t]he biggest victory here is that people have finally acknowledged that rent regulation is a subsidy." Daniel Margulies, the head of another landlord group, the Community Housing Improvement Program, was equally explicit: "they have applied a means test and exposed the system for what it is, a subsidy system." That's precisely what these lobbyists hoped to achieve. But it never changed the fundamental purpose of the system: to eliminate excessive rents in an overheated market.

Beyond asking us to buy into the "failed subsidy" rhetoric, the new Citizens Budget Commission report makes several myopic and unfounded assumptions about the impact of rent regulation. We are told, for example, that an end to rent regulation would result in an increase of $283 million in property tax revenues for the City. Nowhere is there an explanation of what will happen to the local economy when the rent increases needed to cause this jump in tax revenues are imposed on tenants. As rents go up tenants will have less to spend in local restaurants and shops, and landlords are more likely to invest their windfalls in T-Bills or hedge funds than in local business. Under the CBC recommendation, local economic activity is likely to decline and sales tax revenues will suffer. This impact is neglected in the report.

The CBC further informs us that with deregulation, rents in unregulated apartments will actually fall by some two billion dollars. This assumption lacks credibility and it is based upon the disappearance of huge numbers of tenants from the rental market – a conveniently sterile way for economists to ignore the human impact of massive rent increases. It also ignores certain current realities.

According to the 2008 Housing and Vacancy Survey there is a 4.7 percent vacancy rate among unregulated apartments – more than twice the 2.14 percent vacancy rate among rent stabilized units. With a relatively large vacancy rate, unregulated apartments are already at or close to market rents. Deregulation is likely to send formerly regulated tenants displaced by large rent hikes shopping in the broader market of unregulated apartments and inflate rents there. There is no good reason to assume, as the Commission does, that rents in the current unregulated sector will fall if rents are deregulated elsewhere. When Boston deregulated rents in the mid-1990's, average rents for two bedroom apartments advertised in the Boston Globe rose from $740 to $1,700 by 2001. Why would the New York experience be so different?

Further, we are warned by the Commission that rent regulation causes distortions in the

allocation of apartments. This echoes the old criticism that rent regulation promotes underutilization of units – with countless individuals rattling around huge empty dwellings. But the report quietly admits that the one million rent stabilized tenants use their units most efficiently with a lower average number of rooms per tenant (1.49) than their unregulated neighbors (1.67).

The report draws attention to rent controlled apartments where underutilization is clearly present – no surprise, given that the median age of these tenants is 70, and that elderly people often live alone. But a 1999 report by the City's Rent Guidelines Board found that single elderly tenants in non-regulated units underutilize their housing in greater numbers (43.5 percent) than those in rent controlled (34 percent) or rent stabilized (24 percent) units. So even in the dwindling rent controlled sector – there are fewer than 40,000 left in the city – our rent laws result in favorable patterns of housing utilization.

As for the maintenance deficiencies in rent regulated apartments, the most recent Housing and Vacancy Survey reported that the number of maintenance deficiencies are the lowest they have ever been in the forty three year period of surveys. Structural integrity, dilapidation rates and neighborhood quality were among the best ever measured.

Our current rent laws contain very generous incentives for capital and individual apartment improvements. Of course in a City with over forty thousand multiple dwellings maintenance deficiencies do exist. But this neglect is primarily the product of lax enforcement of the City's housing maintenance code. Moreover, the fewer maintenance deficiencies found by the CBC in unregulated units clearly reflects the fact that owners seeking deregulation must undertake expensive improvements when units become vacant to obtain special rent increases and reach the deregulation threshold. It is rent regulation itself which creates that incentive. Finally, restoration of the system which required the removal of code violations to obtain rent increases would go a long way towards eliminating substandard conditions.

Conclusion

Hopefully this review will shed some light on how to structure a well informed debate about the merits of rent regulation and local control. Again, I cannot say that rent regulations would be a good or bad thing in for Seattle. I can say that a poorly informed debates based upon flawed information are likely to be a bad thing. Only a careful, practical and balanced review is likely to produce good policy results. Such a review cannot progress beyond the discussion stage so long as the state locks up Seattle's ability to respond to local housing pressures.

New York, New York
October 12, 2015 Timothy L. Collins